

~~FILED~~

July 22, 2004
UNITED STATES DISTRICT COURT
U.S. FOR THE EASTERN DISTRICT OF VIRGINIA
By Judge
Norfolk Division

UNITED STATES OF AMERICA

v.

DAVID WILLIAM LINDER

FILED

JUL 21 2004

CLERK, US DISTRICT COURT
NORFOLK, VA

MJ-S-04-0193-LRL ✓
CRIMINAL NO. 2:04m577

ORDER TO UNSEAL

Came this day the United States Attorney, by undersigned counsel, and represented to the Court that the defendant has been arrested on charges in Arizona on July 21, 2004 and will be promptly appearing before a Magistrate Judge in Las Vegas, Nevada and there is therefore no reason for the complaint and arrest warrant to remain sealed. It is therefore ordered unsealed.

Tonya C. Miller
UNITED STATES MAGISTRATE JUDGE

July 21, 2004
Norfolk, Virginia

I ask for this:

PAUL J. McNULTY
UNITED STATES ATTORNEY

By: Laura P. Tayman
Laura P. Tayman
Assistant United States Attorney
United States Attorney's Office
World Trade Center
Suite 8000, 101 West Main Street
Norfolk, Virginia 23510
(757) 441-6331

ATTN: K. COOK, VICE
ASSISTANT U.S. ATTORNEY
COUNSEL
U.S. DISTRICT COURT
NORFOLK, VA

United States District Court

EASTERN

DISTRICT OF

VIRGINIA

JUL 22 11:24 AM '04
UNITED STATES OF AMERICA
U.S. ATTORNEY

Norfolk Division

13 2004

CLERK, U.S. DISTRICT COURT
NORFOLK, VA

BY _____ v. _____

DAVID WILLIAM LINDER

SEALED

CRIMINAL COMPLAINT

CASE NUMBER: 2:04-m 511

MJ-S-04-0193-LRL

I, the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief. On or about January 30, 2002 through June 9, 2004 in the Eastern District of Virginia defendant, (Track Statutory Language of Offense)

unlawfully, knowingly, and intentionally conspire with others to distribute and possess with the intent to distribute 5-Methoxy,N,N-Diisopropyltryptamine (5-MeO-DIPT), also known as "Foxy", effective April 4, 2003 a scheduled I controlled substance, prior to April 4, 2003, a controlled substance analogue pursuant to 21 U.S.C. §§ 802(32) and 813, and if convicted of the violation alleged in this Complaint, shall forfeit to the United States any and all property constituting, or derived from, any proceeds the defendant obtained, directly or indirectly as the result of such violations; and any of the defendant's property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of such violations and any substitute assets pursuant to 21 U.S.C. § 853p.

in violation of Title 21 United States Code, Section(s) 846, 841(a)(1) and 853.

I further state that I am a(n) Special Agent of the DEA and that this complaint is based on the following facts:
Official Title

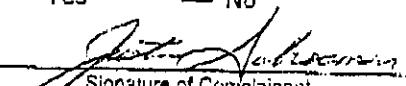
See Attached Affidavit.

SEEN AND APPROVED:

Laura P. Tayman, Assistant U.S. Attorney

Continued on the attached sheet and made a part hereof:

Yes No


Signature of Complainant
Justin Schoeman

Special Agent
Drug Enforcement Administration

Sworn to before me and subscribed in my presence,

July 13, 2004

Date

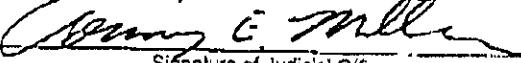
TOMMY E. MILLER

at

Norfolk, Virginia

City and State

UNITED STATES MAGISTRATE JUDGE
Name & Title of Judicial Officer


Signature of Judicial Officer

AFFIDAVIT

1. I, Justin Schoeman, am employed by the United States Department of Justice as a Special Agent of the Drug Enforcement Administration (DEA) and have been so employed since February of 1998. I was previously employed as a law enforcement officer in the State of Florida for six years.
2. As a Special Agent for the DEA, I am an investigative law enforcement officer of the United States of America within the meaning of Section 2510(7) of Title 18 United States Code (USC), that is, an officer of the United States who is empowered by law to conduct investigations of and to make arrests for offenses enumerated in Section 2516 of Title 18 USC.
3. The following is based upon my conversations with Agents from the Naval Criminal Investigative Service (NCIS) in addition to information obtained throughout an in depth investigation. This affidavit is submitted in support of the attached criminal complaint charging David William LINDER with violating 21 USC § 846, conspiracy to distribute 5-Methoxy,N,N-Diisopropyltryptamine (5-MeO-DIPT), also known as "Foxy", effective April 4, 2003 a schedule I controlled substance, prior to April 4, 2003 a controlled substance analogue pursuant to 21 U.S.C. §§ 802(32) and 813. This affidavit contains information necessary to support probable cause for the application. It is not intended to include each and every fact and matter observed by or known to me.
4. On January 31, 2002, Agents from NCIS in Norfolk, Virginia, initiated an investigation on several subjects that were distributing 5-MeO-DIPT. After interviewing numerous people about this group and making several controlled



purchases of 5-MeO-DIPT from co-conspirators, during March 2002 NCIS Agents executed arrest warrants on Richard KLECKER and Timothy LUKE charging them with conspiracy to distribute 5-MeO-DIPT, a controlled substance analog as defined in 21 U.S.C. §§ 802 (32), with intent for human consumption as stated in 21 U.S.C. § 813 in violation of Title 21 U.S.C. §§ 846 and 841 (a)(1). Agents also executed a search warrant at KLECKER's residence in Newport News, Virginia, and recovered approximately 212 grams of 5-MeO-DIPT, Alpha-Methyltryptamine (AMT) and numerous other items of evidence, including extensive cutting and binding agents. A tablet press utilized by KLECKER to manufacture 5-MeO-DIPT in tablet form was also recovered. Agents also recovered KLECKER'S computer, which established that KLECKER corresponded with a source of supply for 5-MeO-DIPT using an e-mail address drbenway@ctaz.com.

5. On August 28, 2002, KLECKER pled guilty to conspiracy to distribute ecstasy, 5-MeO-DIPT, and AMT and one count of distribution of 5-MeO-DIPT to an underage individual. This guilty plea followed a contested hearing in United States District Court for the Eastern District of Virginia, Norfolk Division, which resulted in a judicial finding, beyond a reasonable doubt, that 5-MeO-DIPT and AMT are controlled substance analogues. During this hearing two expert witnesses testified on behalf of the government that 5-MeO-DIPT and AMT were substantially similar in chemical structure to a Schedule I controlled substance and had substantially similar hallucinogenic effects on the central nervous system. Effective April 4, 2003, both 5-MeO-DIPT and AMT were emergency scheduled

as Schedule I controlled substances. During a post-guilty plea interview, KLECKER advised that he had been obtaining the 5-MeO-DIPT over an internet website named www.pondman.nu and had sent e-mail correspondence with the site's operator at e-mail address drbenway@ctaz.com. KLECKER made multiple purchases of 5-MeO-DIPT while exchanging e-mails with the source of supply at e-mail address drbenway@ctaz.com regarding prices, delivery costs, and usage amounts. The 5-MeO-DIPT purchased by KLECKER from www.pondman.nu was pressed into pills then redistributed to active United States Navy personnel and others in the Norfolk, Virginia area.

6. A review of the www.pondman.nu website by your Affiant as recently as July 12, 2004 noted that the central theme of the website was on the manufacture of ponds for gardens, however a hyperlink within the website brought up a web page titled "Research Chemicals". Additionally, a link on the main web-page listed drbenway@ctaz.com as a way to contact the website's operator. On this web page the following chemicals were offered for sale: N,N 5-Methoxydimethyltryptamine (5-MeO-DMT), N,N-Diisopropyl-5-methoxytryptamine HCl (5-MeO-DIPT), Harminc free base, pure Indole, and Diisopropyltryptamine (DIPT), 5-Methoxy-alpha-methyltryptamine (5-MeO-AMT). These chemicals are often used as "club drugs" and as replacements for Ecstasy (MDMA) or other hallucinogens.
 - A. Dimethyltryptamine (DMT) is a Schedule 1 hallucinogen. 5-MeO-DMT is chemically similar to DMT, in that only a methoxy group has been added to the chemical structure. Various sources note the hallucinogenic effects of 5-MeO-DMT are similar to DMT.



B. Harmine Free Base by itself is not a psychotropic chemical. It is naturally occurring in several plants but is best known for its use in a psychedelic drug called Ayahuasca first used by South American indigenous peoples. In the drug Ayahuasca, a plant containing Harmine is combined with a plant containing DMT. Together these two chemicals form a powerful hallucinogenic drug.

C. Harmine is a monoamine oxidase inhibitor (MAOI) which allows the DMT to get past the blood/brain barrier and thus making it psychoactive. For many psychotropic chemicals, the use of a MAOI is necessary for the chemical to be effective as the body will nullify the chemical if taken by itself. The fact that this website offers a MAOI such as Harmine along with DMT indicated that the sites owner has knowledge of the symbiotic nature of these two chemicals for the psychotropic effects. This also shows knowledge of the chemicals use for recreational, not "research", purposes.

D. The chemical Alpha-methyltryptamine (AMT) was emergency scheduled on April 4, 2003. It should also be noted that AMT, prior to April 4, 2003, was an analogue to Alpha-ethyltryptamine (AET). 5-MeO-AMT is chemically similar to AMT in that only a methoxy group has been added. Both of these chemicals have similar hallucinogenic effects and, therefore, if taken for these effects, 5-MeO-AMT would be a controlled substance analogue treatable under the law as a Schedule I controlled substance.

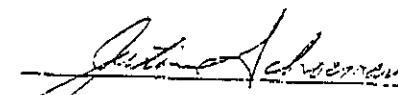
E. Pure Indole is a chemical compound that is created by the bacterial decomposition of Tryptophan. This chemical is often used as a chemical

reagent and could be used in some combinations of these chemicals.

7. On June 3, 2003, SA Justin Schoeman served a subpoena on Frontier Communications asking for account information on e-mail address drbenway@ctaz.com. On June 11, 2003, SA Schoeman received information from Frontier Communications advising that the account was in the name of David W. LINDER. LINDER listed his street address as 295 Moser Avenue, Space 19, in Bullhead City, Arizona, ZIP Code 86442.
8. On December 9, 2003, District of Arizona United States Magistrate Judge David K. Duncan issued a search warrant authorizing Agents to enter and search David W. LINDER'S residence located at 295 Moser Avenue, Lot # 50, in Bullhead City, Arizona, for items related to David W. LINDER'S distribution of the aforementioned "Research Chemicals". On December 10, 2003, the search warrant was executed with David W. LINDER present during the search. Within David W. LINDER'S freezer, your Affiant discovered a plastic container containing an unknown substance. This container was submitted to the DEA Mid-Atlantic Laboratory for analysis. A Forensic Chemist concluded that the submitted substance was 1,012 grams of 5-Meo-DIPT, a Schedule I controlled substance. Other "Research Chemicals" seized during the search were Alpha-Methyltryptamine, 5-Methoxy-alpha-methyltryptamine, 5-Methoxy-N,N-Dipropyltryptamine, Dipropyltryptamine, Harmine, and 5-Hydroxyindole.
9. Based upon the foregoing, I believe there is probable cause to charge David LINDER with Conspiracy to Distribute 5-Meo-DIPT in violation of Title 21 USC §§ 846 and 841(a)(1) and to forfeit the www.pondinan.net website (domain name)



as property used to facilitate the commission of such violation.

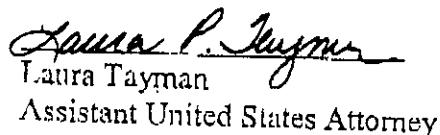


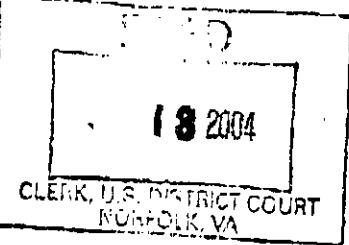
Justin Schoeman, Special Agent
Drug Enforcement Administration

Sworn and subscribed to before me this 13 day of July, 2004.


CONSTANCE E. MILLER
UNITED STATES MAGISTRATE JUDGE

Reviewed for legal sufficiency:


Laura Tayman
Assistant United States Attorney

SEALEDIN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

IN RE:

CRIMINAL COMPLAINT

CASE NUMBER 2:04-mj-5777

)

UNDER SEAL

ORDER SEALING CRIMINAL COMPLAINT

Upon motion of the United States Attorney, pursuant to Local Criminal Rule 49(B) the Court finds that sealing of the criminal complaint, affidavit in support of the criminal complaint and arrest warrant(s) is necessary to prevent notification of the existence of the arrest warrant which could result in flight from prosecution, the destruction of or tampering with evidence, the intimidation of potential witnesses, jeopardize the safety of the arresting officers or otherwise jeopardize the investigation.

It is hereby ORDERED that the criminal complaint, affidavit in support of the criminal complaint and arrest warrant are sealed.

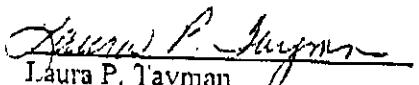
It is further ORDERED that: (1) a certified copy of the complaint shall be provided to those law enforcement officials involved in the prosecution of this case; and (2) a copy of the sealed arrest warrants shall be made available to agents of the Drug Enforcement Administration for execution of the same.

It is further ORDERED that the criminal complaint, affidavit in support of the criminal complaint and arrest warrant are unsealed at the initial appearance of the defendant, at which time the criminal complaint and affidavit in support of the complaint may be treated as a public record.

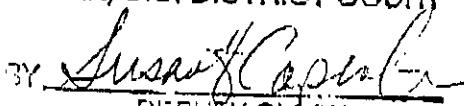
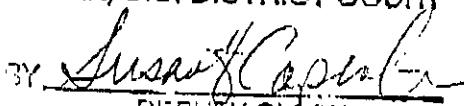
Norfolk, Virginia
July 23, 2004


UNITED STATES MAGISTRATE JUDGE

WE ASK FOR THIS:
PAUL J. McNULTY
UNITED STATES ATTORNEY


Laura P. Tayman
Assistant United States Attorney

A TRUE COPY, TESTE:
CLERK, U.S. DISTRICT COURT


BY 
DEPUTY CLERK

FILED**SEARCHED**

7/22/04 35

United States District Court

JULY 22 2004

EASTERN DISTRICT OF

VIRGINIA

U.S. MARSHAL NORFOLK DIVISION

ORIGINAL**UNITED STATES OF AMERICA****BY****DAVID WILLIAM LINDER****WARRANT FOR ARREST**

CASE NUMBER: 2:04m 577

To: The United States Marshal
and any Authorized United States Officer

MJ-S-04-0193-LRL

YOU ARE HEREBY COMMANDED to arrest _____

David William Linder
Name

and bring him or her forthwith to the nearest magistrate (or other law enforcement officer)

 Indictment Information Complaint Order of court Violation Notice Probation Violation Petition

charging him or her with (brief description of offense)

conspiracy to distribute and possess with the intent to distribute 5-MeO-
DIPT, also known as "Foxy", effective April 4, 2003, a Schedule I controlled substance, prior to April 4, 2003, a
controlled substance analogue pursuant to 21 U.S.C. § 841(32) and a civil and criminal forfeiture.in violation of Title 21 United States Code, Section 846, 841(a)(1) and 853**TOMMY E. MILLER**UNITED STATES MAGISTRATE JUDGE

Name of Issuing Officer

Tommy E. Miller

Signature of Issuing Officer

United States Magistrate Judge

Title of Issuing Officer

Norfolk, Virginia

July 13, 2004

Date and Location

by _____

Name of Judicial Officer

RETURN

This warrant was received and executed with the arrest of the above-named defendant at _____

NOFOLK, VIRGINIA

| | | |
|----------------|--|--------------------------------|
| DATE RECEIVED | NAME AND TITLE OF ARRESTING OFFICER | SIGNATURE OF ARRESTING OFFICER |
| DATE OF ARREST | RECEIVED UNITED STATES MARSHAL JULY 13 2004 21 P 2:12 | |